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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/770,434	02/03/2004	Bob Brennan	BOBR / 04R	3360

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EXAMINER

NINO, ADOLFO

ART UNIT	PAPER NUMBER
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2831

DATE MAILED: 04/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

H.A

Office Action Summary	Application No.	Applicant(s)	
	10/770,434	BRENNAN, BOB	
	Examiner	Art Unit	
	Adolfo Nino	2831	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 January 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Drawings

The drawings were received on 1/11/05. These drawings are acceptable.

Claim Objections

Claim 10 (New) is objected to because of the following informalities:

Claim 10, line 2, "first" should be ----head----.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5, 6 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Farmer (US 4,626,330).

Regarding claim 1 (Currently Amended), Farmer discloses a ground rod (21 fig. 10) having a first end, a shaft portion (19) and a second end said first end having a pointed auger portion (7) fixed to said shaft portion (fig. 10); the second end having a tip portion (5) having means (5) to mate with an electric rotating powered driver (D in fig. 11).

Regarding claim 2, Farmer discloses the ground rod claimed in claim 1 wherein said second end is faceted (fig. 10).

Regarding claim 3, Farmer discloses the ground rod claimed in claim 1 wherein said second end has a square recess (fig. 10) adapted to receive a standard socket drive. **Note** that it has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re. Hutchison*, 69 USPQ 138.

Regarding claim 5 (Currently Amended), Farmer discloses the ground rod claimed in claim 1 with said first end driven into the ground and said second end attached to an electrical system of a building (col. 7, line 64 through col. 8, line 3).

Regarding claim 6, Farmer discloses the ground rod claimed in claim 1 attached to an electric threader (col. 5, lines 13-16).

Regarding claim 11 (New), Farmer discloses a ground rod (21; fig. 10) consisting of a first end, a shaft portion (19), and a second end, said first end having a pointed auger portion (7) integral with said shaft (fig. 10), said second end having means to mate (5) with an electric rotating powered driver (D in fig. 11) wherein said means to mate is integral with said shaft portion (fig. 10).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4 and 7-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Farmer (US 4,626,330) in view of Heinrich (US 2,065,184).

Regarding claim 4 (Currently Amended), Farmer discloses the ground rod claimed in claim 1 **except for** in combination with a handle, said handle configured to attach to said second end to permit manual insertion and removal of said ground rod. Heinrich teaches that it is known to for a ground rod to have a handle attached to a second end of the ground rod as set forth at column 2, lines 51-52. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the ground rod of Farmer be in combination with a handle, as taught by Heinrich in order to permit manual insertion and removal of Farmer's ground rod.

Regarding claim 7, Farmer discloses a temporary ground rod (21) comprising a first end and a second end connected together by a shaft (19): said first end comprising an auger (7) fixed to said shaft (fig. 10); the second end comprising a head portion (5) adapted to connect to and be driven by a wrench (D in fig. 11); **except for** a handle removably attachable to said head portion. **Note** that it has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re. Hutchison*, 69 USPQ 138. Heinrich teaches that it is known to for a ground rod to have a handle attached to a second end of the ground rod as set forth at column 2, lines 51-52. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the ground rod of Farmer be in combination

with a handle, as taught by Heinrich in order to permit manual insertion and removal of Farmer's ground rod.

Regarding claim 8, the modified Farmer discloses the ground rod claimed in claim 7 wherein said second end is faceted (fig. 10 of Farmer).

Regarding claim 9, the modified Farmer discloses the ground rod claimed in claim 7 wherein said second end has a rectangular recess adapted to receive a standard drive (fig. 10 of Farmer). **Note** that it has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re. Hutchison*, 69 USPQ 138.

Claim 10 (New), as best understood by the Examiner, the modified Farmer discloses the ground rod claimed in claim 7 wherein said ground rod includes a hole 14 in fig. 4 of Heinrich) through said head portion and said handle is a rod sized to fit through said hole.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Trudeau et al. (US 6,193,443 B1) disclose a anode installation apparatus. Stombaugh (US 501,811) discloses a land anchor.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Response to Arguments

Applicant's arguments with respect to claims 1-9 have been considered but are moot in view of the new ground(s) of rejection.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Adolfo Nino whose telephone number is (571) 272-1981. The examiner can normally be reached on M-F (7:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dean A. Reichard can be reached on (571) 272-2800 ext. 31. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 2831

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AN

 4/4/05
DEAN A. REICHARD
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2800